IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 20919 of 2007(M)

AGAINST THE ORDER IN IA.375/2007 IN
OS.311/2002 of MUNSIFF COURT,HARIPAD

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PETITIONER:

SASIDHARAN, AGED 60 YEARS,
S/O APPACHAN, MANIMANDIRATHIL VEETTIL,
VALIYAZHEEKKAL MURI, ARATTUPUZHA VILLAGE.

BY ADV. SRI.S.SHANAVAS KHAN
SMT.S.INDU

RESPONDENTS:

KARTHYAYANI, D/O KUNJIPPENNU,
KOCHENPARAMBIL, KALLIKKAD MURI,
ARATTUPUZHA VILLAGE.

BY ADV. SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXTS:

EXT.P1: TRUE COPY OF THE PLAINT IN O.S. NO: 311/02

EXT.P2: -DO- OF THE WRITTEN STATEMENT STATEMENT FILED BY THE RESPONDENTS

EXT.P3: -DO- OF THE COUNTERCLAIM FILED BY THE RESPONDENT

EXT.P4: -DO- OF THE WRITTEN STATEMENT OF THE PETITIONER

EXT.P5: -DO- OF THE AMENDMENT PETITION

EXT.P6: -DO- OF THE SALE DEED NO: 58/93 THAT SUPPORTS THE PROPOSED AMENDMENT TO BE MADE BY THE PETITIONER

EXT.P7: -DO- OF THE ORDER DT. 25.5.07 PASSED BY THE HONOURABLE MUNSIFF COURT, HARIPPAD

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C).No. 20919 OF 2007 M

Dated this the 21st August, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order passed in I.A.375/07 and 376/07 in O.S.311/02. One is to incorporate the amendment in the plaint and the other is to incorporate amendment in the written statement filed to the counter claim. The plaintiff has instituted the suit on the basis of a document of the year 1993 and the said document is produced as Ext.P6. The description of the property in Ext.P6 would reveal that only one survey No:1042/3 is shown but the extent would come to 16 cents i.e one cent plus 15 cents. Now what the plaintiff wants to incorporate by the amendment is that at the time of execution of the document the survey No:1043/3 was omitted to be included in the document though extent is shown in the document. On the other hand the defendants would contend that the trespass is not committed by the defendants but by the plaintiff and the plaintiff has reduced two cents of property which belonged to them into his possession and therefore sought recovery of two cents of land from the plaintiff by way of counter claim. The plaintiff and defendants have filed suits and cross suits and so the court is now bound to consider the title of both

parties with respect to the disputed property. Whether the plaintiff is entitled to 16 cents of property as contended by him and whether it was only an omission of incorporation of survey No:1043/3 are all questions which has to be decided only at the stage of trial. Similarly the defendant is also relying upon his title deeds and claiming property. So, the court, after considering the rival title deeds have to come to the conclusion regarding the entitlement of the property. For the said purpose the plaintiff wants to amend the plaint also and the written statement to the counter claim. It is really necessary for adjudicating the dispute between the parties and it is also a settled principle that the court shall not consider the merits and demerits of the case at the stage of entertaining the amendment application because it may have a far reaching consequences while disposing of the suit ultimately. The proposed amendment does not change the character of the suit and does not deprive any valid right that has accrued to the defendants and it is really necessary for settling the controversy between the parties. Therefore the lower court should have allowed the application for amendment as prayed for. I make it clear that when amendment is carried out the other side is at liberty to file additional written statement and rejoinder

raising their contentions and the court, after permitting the parties to adduce evidence can dispose of the matter in accordance with law. Therefore the writ petition is allowed by setting aside the order and allowing the prayer for amendment as prayed for.

M.N.KRISHNAN
Judge

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